In the High Court of Punjab and Haryana, Chandigarh

CAPP No. 20 of 2003 (O&M)

Date of Decision: January 21, 2009

Export Credit Guarantee Corporation of India Limited

…Appellant

Versus

M/s Punjab Wireless System Limited

…Respondent

CORAM: HON'BLE MR. JUSTICE M.M. KUMAR

HON'BLE MR. JUSTICE H.S. BHALLA

For the Appellant: Mr. Sham Lal Sharma, Advocate.

For the Respondent: Mr. Puneet Kansal, Advocate.

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

M.M. KUMAR, J.

The instant appeal is directed against order dated 18.7.2003 passed by the learned Company Judge in Company Petition No. 57 of 2002 condoning delay of 328 days in re-filing the petition. The facts and circumstances reveal that originally a company petition was filed on 3.10.2000, which was received in the Registry against Diary No. 27189 as 'Ordinary Filing'. The Registry raised some objections and returned the same on 29.10.2000. But the returned petition was not collected by the petitioner-respondent for quite some

time. In the Daily Cause List dated 16.1.2002, a note was circulated by the Registry naming various counsel intimating them that a number of petitions with objections were lying in the Registry unattended. The relevant portion of the Cause List dated 16.1.2002 has been shown to us and the name of the counsel for the Official Liquidator "Puneet Kansal" appeared at Sr. No. 5 against letter 'P' category. Thereafter the counsel for the Official Liquidator collected the petition with objections and re-filed the same on 31.1.2002 after removing the objections, which was numbered as Company Petition No. 57 of 2002, after clearance of the same by the Registry.

2. Shri Sham Lal Sharma, learned counsel for the appellant has argued that filing of petition on 31.1.2002 cannot be regarded as re-filing of the petition and, hence, the petition became time barred as the period for filing the petition expired on 23.10.2000. He has further argued that in any case the actual delay in filing the petition is of 464 days and not of 328 days and that the company petition is in the form of a suit and not in the form of a company petition, therefore, the order passed by the learned Company Judge deserves to be set aside on that ground.

3. Mr. Puneet Kansal, learned counsel for the respondent has argued that it is beyond any reasonable doubt that the petition was filed as an ordinary filing on 3.10.2000 and Diary No. 27189 was allocated to the original filing. He has drawn out attention to the note given by the Registry naming various counsel to apprise them that various petitions filed in the Registry had remained un-attended and

the name of the counsel alongwith date of filing had appeared in the Cause List dated 16.1.2002. He has further pointed out that thereafter the original petition was collected from the Registry and on the advice of the Registry the same was re-typed as the paper book had been badly soiled. It was re-filed on 31.1.2002. The factum that no court fee on the new paper book was affixed on the petition is sufficient to show that it was re-filed alongwith the old petition. Mr. Kansal has also pointed out from the affidavit dated 20.10.2008 filed by the appellant it is clear that inspection through their counsel was undertaken on 15.7.2002, which is evident from Annexure C-13, dated 20.7.2002, which is a letter written by their local counsel to their counsel in Delhi. He has contended that from their own document it is evident that original petition was filed on 3.10.2000, vide Diary No. 27189, which was returned by the Registry on 29.1.2001 with three objections, namely, '(1.) Correct provision of law should be mentioned; (2.) True copy/True photocopy should be filed; (3.) Copy should be supplied to Opp. Counsel'. It was thereafter that the counsel had re-filed the petition after mentioning that '(1.) Petition u/s 446(2) of Companies Act for recovery of money by company in liquidation is maintainable; (2.) true photocopies are being filed; and (3.) there is no opposite counsel as notice is yet to be issued'.

4. Mr. Kansal has also brought to our notice another pernicious feature of this case by submitting that the original file was

lost after re-filing and the same could not be seen after inspection of record on 15.7.2002 by the appellant.

5. After hearing learned counsel for the parties at a considerable length we are of the considered view that no interference in the order passed by the learned Company Judge is warranted as Company Petition No. 57 of 2002 cannot be regarded to have been freshly filed and it has rightly been considered a case of re-filing. It has come on record that the original petition was filed on 3.10.2000, which was returned by the Registry on 29.1.2001 with some objections. The counsel collected it much later in January 2002 when a note had appeared in the cause list dated 16.1.2002. It was thereafter re-filed on 31.1.2002. Even if there is any miscalculation in counting the number of days of re-filing by the learned Company Judge, it is not such a material mistake so as to interfere with the impugned order dated 18.7.2003. It is appropriate to mention that the date of raising objections is 29.1.2001 and the date of re-filing is 31.1.2002, thus, the total days' delay in re-filing comes to 328 days. A period of 40 days is given for re-filing. If 40 days are excluded from 367 days, it comes to 328 days, which has been correctly mentioned in the impugned order dated 18.7.2003 passed by the learned Company Judge. Therefore, there is no ground to interfere with the order of the learned Company Judge and the appeal stands dismissed.

6. Before we part with this order, we wish to deal with the contention raised by Mr. Puneet Kansal, learned counsel for the

Official Liquidator that the original file has disappeared from the record. The irregularity in the misplacement of original file has to be dealt with strenuously. At this stage Mr. Sham Lal Sharma has informed the Court that there is a separate inquiry going on by the Central Bureau of Investigation (CBI) and it is possible that the original file might have been taken by the investigating agency. Accordingly, we direct the Registrar General of this Court to hold an inquiry as to how the original file has disappeared and fix the responsibility of the concerned official. The inquiry be completed within a period of two months from today.

(M.M. KUMAR)
JUDGE

(H.S. BHALLA)
JUDGE

January 21, 2009
Pkapoor